

RECEIPT NUMBER  
509485

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**ORIGINAL****IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

4           **K&R INDUSTRIES, INC.,**  
5            a Michigan corporation,

6           Plaintiff,

7           v.

**ONTEL PRODUCTS**

8           **CORPORATION**, a New Jersey  
9           corporation, **ASHOK KHUBANI**,  
10          an individual who resides in New  
11         Jersey, and **DOEs 1-99**,  
12          **INCLUSIVE**, corporate,  
13         partnership, LLC, and/or other  
14         business entities from various  
15         jurisdictions, whose identities are  
16         to be determined,

17          Defendants.

**JURY TRIAL DEMANDED**

JUDGE : Feikens, John  
DECK : S. Division Civil Deck  
DATE : 06/21/2004 @ 16:34:34  
CASE NUMBER : 2:04CV72297  
CMP KR IND INC V. ONTEL PRODUCTS  
CORP ET AL (DA)

Hon. \_\_\_\_\_  
United States District Judge

**MAGISTRATE JUDGE SCHEER**  
Hon. \_\_\_\_\_  
United States Magistrate Judge

**COMPLAINT FOR TRADEMARK INFRINGEMENT, TRADE DRESS  
INFRINGEMENT, FALSE DESIGNATION OF ORIGIN,  
COUNTERFEITING, AND UNFAIR COMPETITION**

17          1. This is a trademark infringement and trade dress infringement lawsuit.

18          2. Although the product at issue in this case is novel and unique (the

19         GlassMaster® is an articulated cleaning device for use on automobile windows and other  
20         polished and non-polished surfaces), the fact-pattern in this lawsuit is hardly unique or

1 unusual. See, e.g., X-It Products Corp. v. Walter Kidde Portable Equip., 227 F. Supp.2d  
2 494, 546, 549 (E.D.Va. 2002); Carlye Adler, *SPECIAL FEATURE: Can you spot the*  
3 *knockoff? If you're a designer, big retailers want your ideas. They just don't want to pay*  
4 *for them.*, FORTUNE SMALL BUSINESS (Mar. 12, 2002), Tab A.

5 **SUBJECT-MATTER JURISDICTION**

6 3. This honorable Court has subject-matter jurisdiction under 28 U.S.C. § 1331  
7 (federal question), and 28 U.S.C. § 1338(a), (b),<sup>1</sup> because several causes of action asserted  
8 by the Plaintiff arise under the Constitution or Laws of the United States, namely: (1) False  
9 Designation of Origin, in violation of Lanham Trademark Act, 15 U.S.C. § 1125(a); (2)  
10 Trademark Infringement in Violation of the Lanham Trademark Act, 15 U.S.C. §§  
11 1114(1)(a), 1125(a); (3) Counterfeiting, in violation of the Lanham Trademark Act, 15  
12 U.S.C § 1114(1)(b); (4) Trade Dress Infringement in violation of 15 U.S.C. § 1125(a), and  
13 (5) Unfair Competition under section 1125(a).

14 4. This honorable Court has supplemental jurisdiction over all state-law causes  
15 of action under 28 U.S.C. § 1337(a) and/or 28 U.S.C. § 1338(b).

16 \_\_\_\_\_  
17 (a) The district courts shall have original jurisdiction of any civil action arising  
under any Act of Congress relating to patents, plant variety protection, copyrights and  
trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant  
variety protection and copyright cases.

18 (b) The district courts shall have original jurisdiction of any civil action  
asserting a claim of unfair competition when joined with a substantial and related claim  
under the copyright, patent, plant variety protection or trademark laws. . . .

21 28 U.S.C. § 1338.

5. Insofar as claims against Defendants Ontel Products Corporation and Ashok Khubani are concerned, this honorable Court also has subject-matter jurisdiction under 28 U.S.C. § 1332(a)(1), (c)(1) (diversity of jurisdiction), because the Plaintiff (in Michigan) and Defendants Ontel Products Corporation (New Jersey) and Ashok Khubani (New Jersey) reside in different States (complete diversity exists) and the matter in controversy exceeds the value of \$75,000.00, exclusive of interest and costs. However, one or more of DOEs 1-99, INCLUSIVE, are potentially believed to be incorporated and/or to have their principal places of business in Michigan.

## **PERSONAL JURISDICTION**

6. On information and belief, this honorable Court has general personal jurisdiction, for purposes of the Due Process Clauses of the Fifth and Fourteenth Amendments, over Defendant Ontel Products Corporation, because Ontel has purposefully availed itself in a continuous and systematic manner of the State of Michigan, the benefits of doing business in Michigan, and the benefits and protections of Michigan law, by transacting business in a continuous and systematic manner (including a substantial volume of business with Troy, Michigan-based K-Mart Corporation, and Grand Rapids-based Meijer Corporation, among other Michigan businesses), for many years. See, e.g., Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).

7. Specific personal jurisdiction also exists over Ontel Products Corporation.

8. General and specific personal jurisdiction exists over Defendant Khubani.

9. General and specific jurisdiction over DOEs 1-99 will be determined in the

normal course of discovery, once the identity of these defendants is determined.

10. This honorable Court also has jurisdiction under the Michigan Long-Arm statute, MCL §§ 600.701 - 600.715, over the person of Ontel Products Corporation and over Khubani. E.g., Neogen Corp. v. Neo Gen Screening, 109 F. Supp. 2d 724, 727-28 (W.D. Mich. 2000), *rev'd on other grounds*, 282 F.3d 883 (6<sup>th</sup> Cir. Mar. 6, 2002); Ford Motor Co. v. Great Domains, Inc., 141 F. Supp. 2d 763, 771 (E.D. Mi. 2001) (citing Neogen).

11. Long-arm jurisdiction over DOEs 1-99 will be determined in the normal course of fact discovery.

12. Defendant Ontel Products Corporation, has already submitted to Michigan personal jurisdiction, in Smith v. Ontel Prods. Co., Civil Action No. 04-CV-70417-JCO-SDP (E.D Mi. *filed* Feb. 4, 2004), by filing an Answer, without raising any defense of lack of personal jurisdiction.

## PARTIES

13. Plaintiff K&R Industries, Inc., is a Michigan corporation, headquartered in Wayne County, Michigan.

14. Defendant Ontel Products Corporation, on information and belief, is a New Jersey corporation, headquartered in Fairfield, New Jersey.

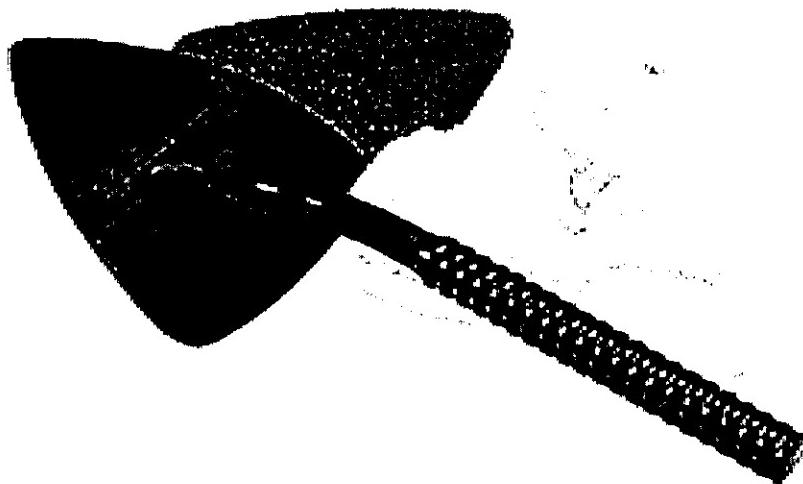
15. Defendant Khubani is an individual who resides in the State of New Jersey, who is personally and directly involved in all aspects of the business of Defendant Ontel, and, on information and belief, even resides at the same address as Ontel's headquarters. On information and belief, Ontel is an *alter ego* of Khubani.

16. Defendants DOEs 1-99, INCLUSIVE, are merchants and retailers throughout the United States (excluding those who, on account of obtaining proper trademark licensing or authorization from Plaintiff, or who Plaintiff has for other reasons voluntarily elected not to sue), who are also subject to suit for the strict-liability torts of trademark and trade dress infringement, as well as for unfair competition and other causes of action – because they have, without Plaintiff's authorization, offered and sold in commerce products (products made and distributed by Defendant Ontel) that infringe Plaintiff's registered trademark GlassMaster®, and which products also infringe the trade dress of Plaintiff's GlassMaster® product and packaging. The products offered and sold in commerce, without Plaintiff's authorization, by DOEs 1-99, INCLUSIVE, are likely to cause mistake, or to cause confusion, or to deceive as to the affiliation, connection, or association of each such DOE 1-99, INCLUSIVE with Plaintiff, or as to the origin, sponsorship, or approval by Plaintiff of the goods, services, or commercial activities of DOEs 1-99, Inclusive. Some of DOEs 1-99, INCLUSIVE, may also be corporate affiliates of Defendant Ontel Products Corporation, that are actively involved in the distribution of infringing merchandise, and the active infringement of Plaintiff's GlassMaster® trademark, and Plaintiff's trade dress.

[INTENTIONALLY LEFT BLANK]

1                   PLAINTIFF'S INTELLECTUAL PROPERTY

2       17. Plaintiff manufactures and sells in commerce a patented device<sup>2</sup> that assists in  
3 the cleaning of glass and other surfaces. The product looks like this:



11 Plaintiff's cleaning product has been sold for several years under the trademark  
12 GlassMaster®. Plaintiff's GlassMaster® product has been advertised on television in many  
13 major media markets. The trademark for the product has become widely-recognized by  
14 customers, nationwide, and has become exclusively and firmly associated with a single  
15 source of high-quality products.

16       18. Plaintiff is the exclusive owner of the federally-registered trademark  
17 GLASSMASTER®, Reg. No. 2,466,153, for goods of the following description: "Window  
18 cleaning kits, comprised of a handle, paddles interchangeably connected to the handle and  
19 an elastic trimmed cloth cleaning towel." Plaintiff's trademark registration, in force since  
20

21                   

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<sup>2</sup>Plaintiff reserves the right to amend this Complaint (or to file a second Complaint in a court of competent jurisdiction), to allege the infringement of one or more patents..

1 July 3, 2001, presumptively establishes Plaintiff's exclusive, nationwide, ownership of the  
2 mark.<sup>3</sup>

3 19. At all times since November 28, 2000, Plaintiff has actively and consistently  
4 used the GlassMaster® trademark, in interstate commerce, on and in connection with its  
5 cleaning product. The GlassMaster® mark has consistently been used on and affixed to all  
6 product packaging of the Plaintiff's cleaning device.

7 20. Separate and apart from the patented and functional aspects of the  
8 GlassMaster® (of course, specific aspects of the product that are functional and that are  
9 covered by one or more utility patents, cannot support a trade dress claim),<sup>4</sup> the  
10 GlassMaster® product and its packaging have several distinctive design characteristics that  
11 serve as trade dress,<sup>5</sup> and that serve a source-identifying function similar to a trademark (the  
12 distinctive shape of a Coca-Cola bottle is the classic illustration of trade dress):

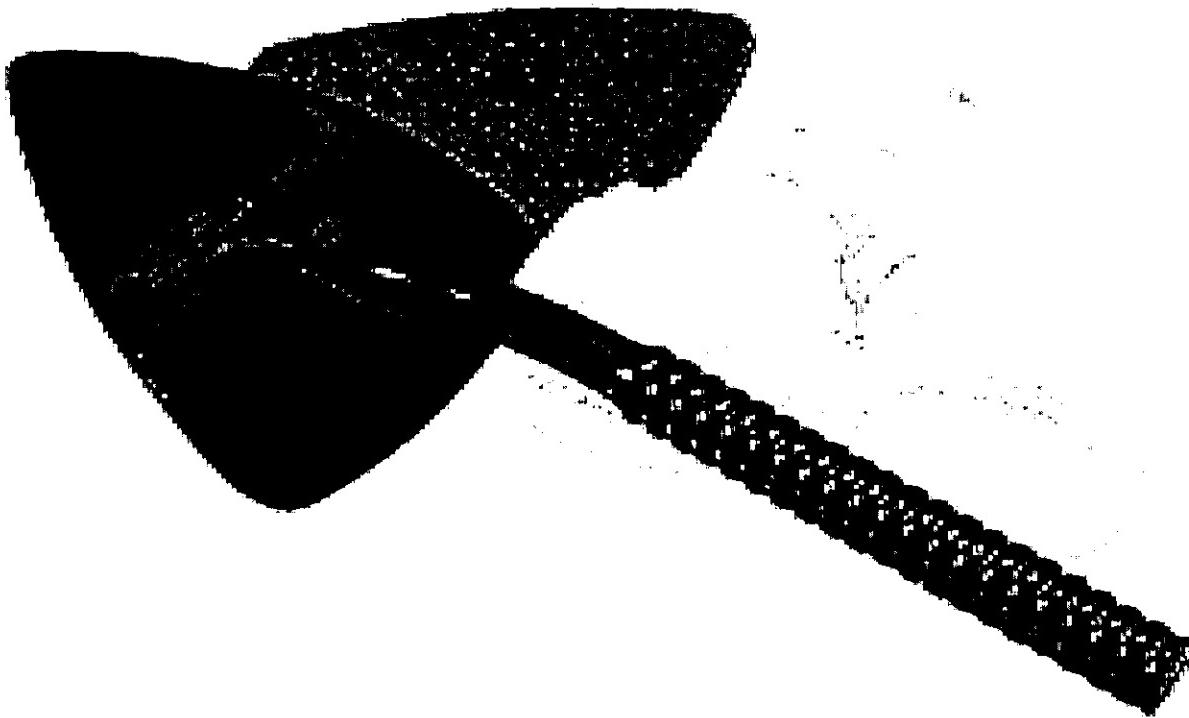
13 \_\_\_\_\_  
14       <sup>3</sup>"Any registration . . . of a mark registered on the principal register provided by  
15 this chapter and owned by a party to an action shall be admissible in evidence and shall  
16 be prima facie evidence of the validity of the registered mark and of the registration of  
17 the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right  
18 to use the registered mark in commerce on or in connection with the goods or services  
19 specified in the registration subject to any conditions or limitations stated therein . . . ."  
20

21       15 U.S.C. § 1115(a); see also 15 U.S.C. § 1057(b), (c).

22       <sup>4</sup>Traffix Devices, Inc. v. Marketing Devices, Inc., 532 U.S. 23, 30-32 (2003).

23       <sup>5</sup>Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763 (1992) (explaining basis for  
24 protecting trade dress under Lanham Trademark Act); see also id., at 775 (pointing out  
25 special significance of protecting trade dress of small, start-up companies, against  
26 appropriation of trade dress by larger competitors who may otherwise be inclined to  
27 flood the market with knock-offs).

- 1       a. The distinctive, recognizable, and decorative shape of the GLASSMASTER®  
2                   paddle (paddles can be made in many different shapes, with no decrease in  
3                   basic functionality):



- 15       b. The distinctive and decorative bend in the handle, between the hand-grip, and  
16                   the paddle-attachment assembly (the device would be just as functional with  
17                   a straight handle, but would not be as aesthetically distinctive);  
18       c. The distinctive curvature of the profile of the paddle (the paddle is more  
19                   distinctive because it is not flat);  
20       d. The font and color in which the GlassMaster® trademark is displayed on the  
21                   product packaging;

- 1 e. Product packaging that prominently features an "As Seen on TV" logo (the
- 2 Plaintiff's product has been featured in television advertising in media
- 3 markets all across the country);
- 4 f. Product packaging that features a large picture of a man using the product to
- 5 clean the front window of his automobile;<sup>6</sup>
- 6 g. The color of the product packaging;
- 7 h. The general design and layout of the product packaging.

8 Collectively, these elements generate a unique and distinctive product presentation and trade  
9 dress, that serves a source-identifying function to customers.

10 21. Plaintiff's GLASSMASTER® trademark, because of a trademark registration,  
11 is presumptively distinctive and strong.

12 22. Plaintiff's GLASSMASTER® mark, beyond any presumptions, is inherently  
13 distinctive and strong as a trademark.

14 23. Plaintiff's GLASSMASTER® mark, through six years of advertisement and  
15 promotion in markets all over the country, has been strengthened and has acquired additional  
16 secondary meaning in the minds of customers and potential customers, and serves an  
17 unmistakable source-identifying function to customers.

18 24. Plaintiff's trade dress is also distinctive of this product (and of Plaintiff's

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19  
20       <sup>6</sup>See, e.g., X-It Prods. v. Walter Kidde Portable Equip., 155 F. Supp. 2d 577, 617-  
21 24 (E.D. Va. 2001) (addressing very similar trade dress claim based on packaging  
design), *subsequent proceeding*, 227 F. Supp. 2d 494 (E.D. Va. 2002), *appeal dismissed  
due to settlement*.

1 identity as the unique source and origin of the product). This trade dress signifies that a  
2 product with the same or closely similar trade dress, comes from a single, unique, source  
3 (namely, the maker of the Plaintiff's product) – even if customers do not know the name or  
4 identity of the source.

5 25. Plaintiff's trade dress is inherently distinctive.

6       26. Plaintiff's trade dress – through six years of advertisement and promotion in  
7 markets all over the country – has been strengthened and has acquired additional secondary  
8 meaning in the minds of customers and potential customers, thereby serving an unmistakable  
9 source-identifying function to customers.

10        27. Plaintiff has invested considerable amounts advertising and promoting the  
11 GlassMaster® trademark, and the product's unique trade dress. In the course of this  
12 advertising and promotion, the trademark and trade dress have become strongly associated  
13 in the minds of the purchasing public with the Plaintiff's window-cleaning system.

ONTEL PRODUCTS CORPORATION

15        28. Ontel Products Corporation has a well-known and somewhat notorious  
16 litigation history, arising out of its sales of products (and product packaging) that closely  
17 imitate the original products and product ideas of others (generally, the original ideas of  
18 start-up companies who are promoting their products on television). For instance (this is  
19 only a sample, not a complete history of all of Ontel's litigation), Ontel has been sued in  
20 these cases:

<sup>21</sup> • Hatchett v. Ontel Prods. Corp., No. 96-CV-3433 (S.D. Fl. filed Nov. 27,

1                   1996) (Ontel sued for patent infringement); Hatchett v. Ontel Prods. Corp.,  
 2                   No. 97-CV-63 (N.D. Miss. *filed* Apr. 22, 1997) (same).

- 3                   • Computer Business Works v. Ontel Prods. Corp., No. 2:04-CV-03551-MMM-  
 4                   RNB (C.D. Cal. *filed* May 20, 2004) (in copyright follow-on to trademark  
 5                   lawsuit in California state court,<sup>7</sup> Ontel is directed to show cause why it  
 6                   should not be enjoined from infringing copyright for inkjet refill instructions);
- 7                   • Trade Assocs., Inc. v. Ontel Prods. Corp., 2:01-CV-01724-BJR (W.D. Wa.  
 8                   *filed* Oct. 24, 2001) (Ontel sued for infringing “AIR FORCE” trademark on  
 9                   or in connection with household tools);
- 10                  • Ensar Corp. v. Ontel Prods. Corp., No. 2:96-CV-04285-JAG (D. N.J. *filed*  
 11                 Sept. 11, 1996) (Ontel sued for patent infringement and permanently enjoined  
 12                 from infringing patent);
- 13                  • E. Mishan & Sons v. Ontel Prods. Corp., C.A. No. 1:00-CV-04161-LLS  
 14                 (S.D.N.Y. *filed* June 5, 2000) (Ontel sued for trademark infringement);
- 15                  • Ferris Marketing, Inc. v. Ontel Products Corp., C.A. No. 1:02-cv-11114-GAO  
 16                 (D. Mass. *filed* June 3, 2002) (Ontel sued for copyright infringement);
- 17                  • DDS Marketing, Inc. v. Ontel Prods. Corp., 2:97-cv-00096-KSH (D. N.J. *filed*  
 18                 Jan. 13, 1997) (Ontel sued for trademark infringement);
- 19                  • Ingenious Designs v. Khubani, et al., C.A. No. 0:97-CV-00147-DRH

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20                  <sup>7</sup>Plaintiff’s counsel in this case briefly represented Computer Business Works, in  
 21                  connection with covering one deposition in Grand Rapids, Michigan, as part of the  
                      California state-court lawsuit.

(E.D.N.Y. filed Jan. 11, 1997) (Ontel sued for trademark infringement);

- Welcome Co., Ltd. v. Telebrands Corp., et al., C.A. No. 2:97-CV-09379-DT-JG (C.D. Cal. *filed* Dec. 17, 1997) (Ontel sued for infringing patents);  
Welcome Co., Ltd. v. Ontel Prods. Corp., C.A. No. 00-CV-8665 (C.D. Cal. *filed* Aug. 15, 2000) (patent infringement);
  - Project Strategies Corp. v. Ontel Prods. Corp., C.A. No. 2:94-cv-05984-WGB (D.N.J. *filed* Dec. 16, 1994) (trademark infringement); Ontel Prods. v. Project Strategies, C.A. No. 1:94-CV-09025-HB (S.D.N.Y. *filed* Dec. 16, 1994).

29. On information and belief, Ontel has represented to third-parties, and tried to create the belief in others that it “owns,” or has some kind of exclusive right to, the slogan “as seen on television.” Ontel, to the contrary, is neither the only company to use this designation, nor does it have any legally-enforceable right to exclude others from using it.

30. Moreover, Ontel in the past marked some of its products with slogans and logos such as "similar to products seen on television," to create the misleading impression that Ontel's products (imitations of the products of small start-ups -- who advertised on television) are or were the same ones that people saw in television advertising – when, in fact, Ontel's products are and were not the same ones seen by customers on TV.

18        31. More recently, because of legal problems with the strategy summarized in  
19 Paragraphs 29 and 30, Ontel has taken to producing its own “infomercials” for knock-off  
20 products (so that both the knock-off and the original product are both seen on television, but  
21 at different times, in different commercials, produced by different companies), and then

1 using the “as seen on TV” logo to create the false impression that Ontel is the source or  
2 origin of someone else’s product that Ontel has knocked-off.

3       32. From the various infringement lawsuits against Ontel, an evident pattern of  
4 conduct emerges. Ontel has an advantage over smaller start-up companies (which  
5 companies generally have one product and must establish retail relationships from scratch)  
6 because Ontel has for many years developed an extensive network of retail outlets, to which  
7 it ships its wares. Because of this advantage from an installed base of retailers, Ontel is able  
8 to put essentially any small first-mover out of business, by saturating the market with a  
9 cheaper knock-off with reduced functionality – before moving on to the next product and  
10 the next victim.

11       33. Ontel learns of smaller competitors’ good product ideas from television, and  
12 then obtains a sample of any product(s) it wants to knock-off. Ontel then makes minor,  
13 cosmetic, changes to the product and to the product packaging – so that Ontel’s version is  
14 not identical (just confusingly similar) to the original product.

15       34. Ontel then sends its re-designs overseas (generally, to mainland China), where  
16 each such knock-off can be manufactured in huge quantities at very low cost. Thus, at just  
17 the time when the hard work of an entrepreneurial American company – priming the market  
18 to recognize and accept a new and useful product – is just about to pay off, Ontel jumps into  
19 the market with inferior, imitation knock-off devices, and floods the market with them,  
20 thereby profiting handsomely from the work and original ideas of others.

21       35. The reason that Ontel sometimes gets away with it is essentially a numbers

1 game – not all instances of infringement are detected, and for many instances that are, by the  
2 time the victim sees what is coming, it is often too late.

3       36. Moreover, even when the victim of infringement has the opportunity to do  
4 something about it, a significant percentage elect not to sue. As explained succinctly in  
5 Carlye Adler, *SPECIAL FEATURE: Can you spot the knockoff? If you're a designer, big*  
6 *retailers want your ideas. They just don't want to pay for them.*, FORTUNE SMALL BUSINESS  
7 (Mar. 12, 2002), Tab A:

8           Taking on a big company can be expensive, though. In intellectual-property  
9 lawsuits in which less than \$1 million is at stake, attorneys' fees and costs  
10 average \$400,000, according to Penta Advisory Services in Washington, D.C.,  
11 a consulting company. When \$1 million to \$10 million is at stake, the fees  
12 average \$1 million. Most small businesses can't afford that, especially when  
13 the outcome is so uncertain. Aldo DiBelardino, co-founder and director of  
14 X-IT, had to remortgage his house and dip into his retirement savings to cover  
15 his legal costs for the lawsuit against Kidde. And even though his company  
16 won in court, he says some bills still remain unpaid, as X-IT hasn't yet  
17 received the check for damages.

18 Thus, even if Ontel is required to disgorge all the profits from 1/3 of the products and  
19 devices it knocks-off, Ontel still winds up making a handsome profit on all the infringement  
20 that it gets away with -- unchallenged.

21       37. Moreover, even in those cases in which victims of Ontel's knock-off scheme

1 elect to go to court, Ontel tends to use its financial resources and distribution advantages to  
2 buy them off. For instance, in the Computer Business Works ("CBW") case in California,  
3 Ontel shipped packages that infringed the "Universal" trademark, and the package trade  
4 dress of CBW, for inkjet printer refill kits. CBW's trademark included an "ink drop" design  
5 inside the U of the word Universal. Ontel – contending this was "merely descriptive" –  
6 imitated the Universal mark and the ink drop – as well as other key aspects of CBW's  
7 original trade dress. CBW sued. On information and belief, CBW learned in discovery that  
8 Ontel's telephone marketers were calling retailers (like Meijer, K-Mart, and Wal-Mart), and  
9 trying to pretend that they were from CBW (or trying to leave purchasing agents with an  
10 ambiguous impression) in order to get the Ontel products into stores. After CBW sued,  
11 Ontel elected to join forces with CBW, and Ontel therefore started distributing the genuine  
12 CBW product (instead of Ontel's knock-off) through Ontel's retail channels.

13       38. At last word, the issue of a remedy for the period of infringement, in the CBW  
14 case, has been referred to arbitration.

15       39. In other cases, Ontel will pay off those who sue it by offering an amount of  
16 money to make the infringement lawsuit go away, but not enough to fully compensate the  
17 settling party for all the lost business and harm the infringement has caused. Even after  
18 paying off the percentage of victims who sue, Ontel is left with enormous profits and a big  
19 enough war-chest to threaten anyone who does not take their deal, that the alternative will  
20 be unpleasant and costly.

21       40. The end result of Ontel's business practices is significant harm to small

1 manufacturers – and their workers – in the United States and Canada, as well as significant  
2 financial harm to creative persons, inventors, and designers in the United States.

3        41. The beneficiaries appear to be the owners of Ontel, and the owners of the  
4 Chinese factories in which Ontel's knock-offs are made by low-wage workers who have no  
5 rights to organize, no health benefits, and little of the protections that would result were  
6 China to adopt adequate regulations to govern workplace safety, hours, and other conditions.

## **ONTEL'S INFRINGEMENT**

8        42. In this instance, Ontel has started flooding the market with a product called the  
9 Glass Wizard, which it has started advertising on television and is shipping to many retailers  
10 in various locations:



21 || 43. The Ontel Glass Wizard directly copies and infringes each and all of the

1 specific non-patented aspects of the GlassMaster® trade dress alleged in Paragraph 20,  
2 *supra*. The Glass Wizard is not protected by any patent or by any trademark registration  
3 with the U.S. Patent & Trademark Office.

4 44. It is probably understandable why Ontel has not sought to register "Glass  
5 Wizard" as a trademark for this product – because Ontel is already on statutory notice that  
6 Plaintiff has exclusive, nationwide, right to the trademark GlassMaster®, which means that  
7 anybody who uses a mark so similar as to be *likely* to deceive, or to cause mistake, or to  
8 cause confusion, cannot obtain a registration (such as for the mark "Glass Wizard").

9 45. "Glass Wizard" is, in fact, confusingly similar to Plaintiff's GlassMaster®  
10 trademark, under the eight-factor test established for "likelihood of confusion," in trademark  
11 cases, in the Sixth Circuit. See Frisch's Restaurants, Inc. v. Elby's Big Boy of Steubenville,  
12 670 F.2d 642, 648 (6<sup>th</sup> Cir.), *cert. denied*, 459 US 916 (1982).

13 46. Strength of Senior Mark: GlassMaster® is a strong mark, both because of  
14 inherent distinctiveness, and due to additional acquired distinctiveness and  
15 secondary meaning resulting from several years of promotion, and widespread  
16 advertisement in nationwide commerce.

17 47. Relatedness of the Goods or Services: The GlassMaster® and the Glass  
18 Wizard are directly competitive products, that do the same thing, that Ontel  
19 has intentionally caused to look alike, and that are sold to the same customers.

20 48. Similarity of the Marks: Under the traditional "sight, sound, and meaning"

1 test,<sup>8</sup> the marks are indistinguishable and are highly likely to cause confusion  
2 when singly presented. Both are pronounced with the same rhythm, have the  
3 same number of syllables, and the same number of letters. Both marks look  
4 alike, and both begin with the word "Glass." The remainder of each mark is  
5 a term – "Master" or "Wizard" – that conveys masculine dominance over a  
6 task, masculine power, and superior skill at accomplishing a task. In short, the  
7 marks are identical for all practical purposes.

- 8 49. Evidence of Actual Confusion: Since the introduction of the knock-off Glass  
9 Wizard product, significant numbers of confused persons (both retailers who  
10 purchase large numbers of units, and end-users) have come to light.
- 11 50. Marketing Channels Used: These products are marketed and sold through  
12 essentially the same channels – both direct sales through television  
13 advertising, and retail sales to end-users in stores carrying both general and  
14 specialty merchandise.
- 15 51. Likely Degree of Purchaser Care and Sophistication: These are not  
16 complicated technical devices, or customized goods -- and, therefore,  
17 purchasers are unlikely to exercise much care to make sure that the cleaning  
18 wand they purchase is the same GlassMaster® product that they actually  
19 wanted to purchase after they saw GlassMaster® on television.

20 \_\_\_\_\_  
21 <sup>8</sup>Wynn Oil Co. v. Thomas, 839 F.2d 1183, 1188 (6<sup>th</sup> Cir. 1988) (citing James  
Burrough Ltd. v. Sign of Beefeater, Inc., 540 F.2d 266, 275 (7<sup>th</sup> Cir. 1976)).

52. Intent of the Defendant in Selecting the Mark: Active copying of the mark – which is evident in this instance (OnTel could have used a much different trade dress and a non-confusing trademark such as “Auto Shine,” but OnTel didn’t) – creates a presumption that the infringer intended to cause the public to confuse the competing products;

53. Likelihood of Expansion of the Product Lines: Since the products already directly overlap, they cannot possibly come any closer in the future, through expansion of product lines.

9        54. Moreover, the Glass Wizard is an inferior product because the pivot  
10 mechanism of the Glass Wizard does not allow paddles to be interchanged with the same  
11 ease as paddles can be interchanged on a genuine GlassMaster® cleaning wand.

12        55. Interchanging paddles for an Ontel Glass Wizard (say, if one saturates the first  
13 paddle with a solvent and then needs a “dry” paddle) is much more difficult and potentially  
14 hazardous to customers with the Glass Wizard, than with the GlassMaster®’s patented  
15 paddle-change, and pivot device.

16        56. The Glass Wizard is not consistent with the quality standards that the public  
17 has come to associate and expect from genuine GlassMaster® products.

18        57. The same eight-factor test applies to trade dress infringement, as to trademark  
19 infringement, and under the same test, Ontel is equally guilty of trade dress infringement,  
20 as a matter of law.

<sup>21</sup> 58. Under the analysis set forth in PACCAR, Inc. v. Telescan Techs., 319 F.3d

1 243 (6<sup>th</sup> Cir. 2003) (“First, if the parties compete directly by offering their goods or services,  
2 confusion is likely if the marks are sufficiently similar; second, if the goods or services are  
3 somewhat related but not competitive, the likelihood of confusion will turn on other factors;  
4 third, if the goods or services are totally unrelated, confusion is unlikely.”), a *likelihood* of  
5 confusion, and trademark infringement, are established as a matter of law.

6 **COUNT ONE – FALSE DESIGNATION OF ORIGIN**

7 59. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-58 as  
8 though set forth verbatim herein.

9 60. Plaintiff is the exclusive worldwide owner of the federally-registered  
10 GlassMaster® trademark and brand name.

11 61. The mark is distinctive and/or has acquired secondary meaning as an  
12 identification that products (pivot-head surface-cleaning wands, in particular) come from the  
13 Plaintiff.

14 62. Quite recently, Defendants (including Defendant Ontel), have been using a  
15 confusingly similar trademark on a directly-competing but inferior product, and causing  
16 actual confusion in the marketplace, even though none of the Defendants-Infringers is the  
17 source of genuine GlassMaster® cleaning wands, and none of them has ever been properly  
18 authorized or licensed by the Plaintiff to do so.

19 63. In so doing, in connection with the sale of goods or services in commerce,  
20 Defendants-Infringers (or one or more or all of them), has falsely used in commerce (and  
21 published falsely to customers) one or more words, terms, symbols, names or devices, and/or

1 one or more combination(s) thereof, and/or one or more false designation(s) of origin, and/or  
2 a false or misleading description of fact, and/or misleading representation of fact.

3       64. Defendants'-Infringers' use in commerce (and publication falsely to  
4 customers) of words, terms, symbols, names or devices, and/or one or more combination(s)  
5 thereof, and/or one or more false designation(s) of origin, and/or one or more false or  
6 misleading description(s) of fact, and/or misleading representation(s) of fact are likely to  
7 cause confusion, or to cause mistake, or to deceive as to the affiliation, or connection, or  
8 association of Defendants-Infringers (or one or more or all of them) as to the origin,  
9 sponsorship, or approval of the Plaintiff.

10       65. Defendants-Infringers (or one or more or all of them – especially Ontel) have  
11 willfully engaged in the falsification of designations of origin and/or representations or  
12 descriptions of fact concerning such goods and/or services.

13       66. Plaintiff, and the goodwill associated with Plaintiff's mark, has been materially  
14 injured by the foregoing misconduct of the Defendants-Infringers.

15                   **COUNT TWO – TRADEMARK INFRINGEMENT**  
16                   **IN VIOLATION OF 15 U.S.C. § 1114**

17       67. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-66 as  
though set forth verbatim herein.

18       68 Plaintiff is the exclusive worldwide owner of the federally-registered  
19 GlassMaster® trademark and brand name.

20       69. The mark is (presumptively and actually) distinctive and/or has acquired

1 secondary meaning as an identification that products (pivot-head surface-cleaning wands,  
2 in particular) come from the Plaintiff.

3       70. Quite recently, Defendants (including Defendant Ontel), have unlawfully been  
4 using in commerce a reproduction, counterfeit, copy, or colorable imitation of Plaintiff's  
5 registered mark -- on or in connection with the sale, offering for sale, distribution, or  
6 advertising of Defendants goods or services.

7       71. Defendants' use of said reproduction, counterfeit, copy, or colorable imitation  
8 of Plaintiff's registered mark -- on or in connection with Defendants' goods -- is (due to the  
9 nature of such goods) highly likely to cause confusion, or to cause mistake, or to deceive,  
10 and therefore violates 15 U.S.C. section 1114(1)(a), of the Lanham Trademark Act.

11       72. Defendants' violation of Plaintiff's registered trademark, specifically, involves  
12 a directly-competing but inferior product.

13       73. Defendants' infringement of the registered trademark is causing actual  
14 confusion in the marketplace.

15       74. None of the Defendants-Infringers is the source of genuine GlassMaster®  
16 cleaning wands, and none of them has ever been properly authorized or licensed by the  
17 Plaintiff to do so.

18       75. Defendants-Infringers (or one or more or all of them – especially Ontel) have  
19 willfully engaged in the falsification of designations of origin and/or representations or  
20 descriptions of fact concerning such goods and/or services.

21       76. Plaintiff, and the goodwill associated with Plaintiff's mark, has been materially

1       injured by the foregoing misconduct of the Defendants-Infringers.

2                   **COUNT THREE -- TRADEMARK INFRINGEMENT**  
3                    IN VIOLATION OF 15 U.S.C. § 1125(a)

4       77. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-76 as  
5       though set forth verbatim herein.

6       78. Plaintiff is the exclusive worldwide owner of the federally-registered  
7       GlassMaster® trademark and brand name.

8       79. The mark is distinctive and/or has acquired secondary meaning as an  
9       identification that products (pivot-head surface-cleaning wands, in particular) come from the  
10      Plaintiff.

11      80. Quite recently, Defendants (including Defendant Ontel), have been using a  
12      confusingly similar trademark on a directly-competing but inferior product, and causing  
13      actual confusion in the marketplace, even though none of the Defendants-Infringers is the  
14      source of genuine GlassMaster® cleaning wands, and none of them has ever been properly  
15      authorized or licensed by the Plaintiff to do so.

16      81. In so doing, in connection with the sale of goods or services in commerce,  
17      Defendants-Infringers (or one or more or all of them), has falsely used in commerce (and  
18      published falsely to customers) one or more words, terms, symbols, names or devices, and/or  
19      one or more combination(s) thereof, and/or one or more false designation(s) of origin, and/or  
20      a false or misleading description of fact, and/or misleading representation of fact.

21      82. Defendants'-Infringers' use in commerce (and publication falsely to

1 customers) of words, terms, symbols, names or devices, and/or one or more combination(s)  
2 thereof, and/or one or more false designation(s) of origin, and/or one or more false or  
3 misleading description(s) of fact, and/or misleading representation(s) of fact are likely to  
4 cause confusion, or to cause mistake, or to deceive as to the affiliation, or connection, or  
5 association of Defendants-Infringers (or one or more or all of them) as to the origin,  
6 sponsorship, or approval of the Plaintiff.

7        83. The actions of Defendants-Infringers (or one or more or all of them), as set  
8 forth above, infringe the trademark of the Plaintiff, and cause deception or mistake or  
9 confusion of customers in the marketplace, in violation of 15 U.S.C. § 1125(a).

10        84. The actions of Defendants-Infringers (or one or more or all of them), as set  
11 forth above, are intentional and willful, and are calculated to cause deception or mistake or  
12 confusion of customers in the marketplace.

13 | 85. Defendants-Infringers have willfully infringed the Plaintiff's trademark.

## **COUNT FOUR -- COUNTERFEITING**

15        86. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-85 as  
16 though set forth verbatim herein.

17       87. Plaintiff is the exclusive worldwide owner of the federally-registered  
18 GlassMaster® trademark and brand name.

19       88. The mark is distinctive and/or has acquired secondary meaning as an  
20 identification that products (pivot-head surface-cleaning wands, in particular) come from the  
21 Plaintiff.

89. Quite recently, Defendants (including Defendant Ontel), have been using a confusingly similar trademark on a directly-competing but inferior product, and causing actual confusion in the marketplace, even though none of the Defendants-Infringers is the source of genuine GlassMaster® cleaning wands, and none of them has ever been properly authorized or licensed by the Plaintiff to do so.

90. Defendants, in so doing, have reproduced, counterfeited, copied, or colorably imitated Plaintiff's registered mark and applied such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used (and actually used by Defendants) in commerce -- on, upon, or in connection with the sale, offering for sale, distribution, or advertising of Defendant goods or services.

91 Defendants' unauthorized and unlawful use of said reproduction, counterfeit, copy, or colorable imitationon of Plaintiff's mark on, upon, or in connection with Defendants' goods is likely to cause confusion, or to cause mistake, or to deceive.

92. The actions of Defendants-Infringers (or one or more or all of them), as set forth above, are intentional and willful, and are calculated to cause deception or mistake or confusion of customers in the marketplace.

93. Defendants-Infringers have willfully infringed the Plaintiff's trademark.

## COUNT FIVE – TRADE DRESS INFRINGEMENT

94. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-93 as though set forth verbatim herein.

1       95. Plaintiff is the exclusive worldwide owner of the distinctive and original trade  
2 dress of the GlassMaster® pivot-head surface-cleaning wand.

3       96. The mark is distinctive and/or has acquired secondary meaning as an  
4 identification that the products (pivot-head surface-cleaning wands) come from the Plaintiff.

5       97. Quite recently, Defendants (including Defendant Ontel), have been using a  
6 confusingly similar trade dress on and in connection with a directly-competing but inferior  
7 product, and causing actual confusion in the marketplace, even though none of the  
8 Defendants-Infringers is the source of genuine GlassMaster® cleaning wands, and none of  
9 them has ever been authorized or properlicensed by Plaintiff to do so.

10       98. In so doing, in connection with the sale of goods or services in commerce,  
11 Defendants-Infringers (or one or more or all of them), has falsely used in commerce (and  
12 published falsely to customers) one or more words, terms, symbols, names or devices, and/or  
13 one or more combination(s) thereof (*i.e.*, the knock-off trade dress) and/or one or more false  
14 designation(s) of origin, and/or false or misleading descriptions of fact, and/or misleading  
15 representations of fact.

16       99. Defendants'-Infringers' use in commerce (and publication falsely to  
17 customers) of the infringing trade dress is likely to cause confusion, or to cause mistake, or  
18 to deceive as to the affiliation, or connection, or association of Defendants-Infringers (or one  
19 or more or all of them) as to the origin, sponsorship, or approval of the Plaintiff.

20       100. Defendants-Infringers (or one or more or all of them – especially Ontel) have  
21 willfully engaged (through a misleading and deceptive trade dress) in the falsification of

1 designations of origin and/or representations or descriptions of fact concerning such goods  
2 and/or services, and are liable for trade dress infringement.

3 101. Plaintiff, and the goodwill associated with Plaintiff's mark, has been materially  
4 injured by the foregoing misconduct of the Defendants-Infringers.

5 **COUNT SIX – UNFAIR COMPETITION**

6 102. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-101  
7 as though set forth verbatim herein.

8 103. The actions of Defendants-Infringers, as set forth above, also constitute unfair  
9 competition, which is separately actionable under federal trademark law.

10 104. Defendants-Infringers have willfully engaged in unfair competition.

11 **COUNT SEVEN – UNFAIR COMPETITION (STATE LAW)**

12 105. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-104  
13 as though set forth verbatim herein.

14 106. The actions of Defendants-Infringers, as set forth above, also constitute  
15 unfair competition, which is separately actionable under Michigan state law.

16 107. Defendants-Infringers have willfully engaged in unfair competition.

17 **COUNT EIGHT – TRADEMARK INFRINGEMENT (STATE LAW)**

18 108. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-107  
19 as though set forth verbatim herein.

20 109. The actions of Defendants-Infringers, as set forth above, infringe the  
21 trademark of the Plaintiff, and are calculated to cause deception or mistake or confusion

1 of customers in the marketplace, which is separately actionable under Michigan state law.

2 110. Defendants-Infringers have willfully infringed the Plaintiff's trademark.

3 **CONCLUSION AND PRAYER FOR RELIEF**

4 Wherefore, based on the foregoing claims and causes of action, Plaintiff prays for

5 the following specific relief:

6 1. That this honorable Court issue a preliminary injunction, prohibiting any  
7 further infringement of Plaintiff's registered GlassMaster® trademark, or of Plaintiff's  
8 distinctive trade dress, by any and all of the Defendants-Infringers, or by anyone in active  
9 concert or participation with them, for the duration of the lawsuit.

10 2. That this honorable Court issue a permanent injunction, permanently  
11 prohibiting infringement of Plaintiff's registered GlassMaster® trademark, or of  
12 Plaintiff's distinctive trade dress (or unfair competition, or false designation of origin,  
13 using the Plaintiff's trademark or trade dress or colorable imitation thereof) by the  
14 Defendants-Infringers, or by anyone in active concert or participation with them.

15 3. That the Defendants-Infringers be permanently enjoined from using in  
16 commerce any device, name, word, symbol, or designation of origin (including, without  
17 limitation, any Internet domain name) that is confusingly similar to Plaintiff's registered  
18 GlassMaster® trademark, or of Plaintiff's distinctive trade dress, on or in connection  
19 with any cleaning tools or devices.

20 4. That the Defendants-Infringers be permanently be enjoined from taking any  
21 action that is likely to infringe, or that is calculated or intended to infringe, or to result in

1 unfair competition with, the Plaintiff and/or Plaintiff's registered GlassMaster®  
2 trademark, and/or Plaintiff's distinctive trade dress;

3       5. That the Defendants-Infringers be required to make a full accounting of  
4 revenues and profits to the Plaintiff.

5       6. That the Defendants-Infringers be required to disgorge their profits – 15  
6 U.S.C. § 1117(a)(1).

7       7. That the Plaintiff recover the Plaintiff's actual damages from the  
8 Defendants-Infringers – § 1117(a)(2), including a reasonable royalty (such as would have  
9 been paid had a license been properly obtained);

10      8. That Defendants-Infringers be required to pay the costs of the action.

11      9. That Defendants-Infringers be required to pay statutory damages as set  
12 forth in 15 U.S.C. § 1117.

13      10. That the amount of the judgment for profits, damages and disgorgement be  
14 trebled, as permitted in 15 U.S.C. § 1117(a), to assure full and complete compensation to  
15 the Plaintiff.

16      11. That Defendants-Infringers be held to pay the reasonable attorney's fees of  
17 the prevailing Plaintiff.

18      12. That Plaintiff be granted such other and further relief, whether in law,  
19 equity, or otherwise, as to which Plaintiff may be justly entitled.

20  
21

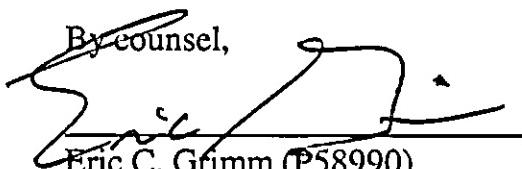
1  
2                   **JURY DEMAND**

3 Plaintiff demands a trial by jury for all issues so triable.

4                   Respectfully submitted,

5                   **K&R INDUSTRIES, INC.,**

6                   By counsel,

7                     
Eric C. Grimm (P58990)

8                   Joseph A. Cruciani (P53922)

9                   **CALLIGARO & MEYERING, P.C.**

10                  20600 Eureka Road

11                  Suite 900

12                  Taylor, MI 48180

13                  734.283.2727

14                  Fax 734.246.8635

15                  COUNSEL FOR PLAINTIFF.

16                  June 21, 2004

JS 44 11/99

**CIVIL COVER SHEET** COUNTY IN WHICH THIS ACTION AROSE:

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**I. (a) PLAINTIFFS**

K&amp;R Industries, Inc.

**DEFENDANTS**

Ontel Products Corp., et al.

(b) County of Residence of First Listed

Wayne

26/6/3

County of Residence of First Listed

N/A

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(C) Attorney's (Firm Name, Address, and Telephone Number)

Eric C. Grimm  
20600 Eureka Road, Ste 900  
Taylor, MI 48180 732.283.2727

Attorneys (If Known)

Not Known JOHN FEIKES S/Scheer

722-97

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENSHIP OF PARTIES		JURISDICTION		Plaintiff (For Diversity Cases Only)		Defendant	
PLA	DEF	PLA	DEF	PLA	DEF	PLA	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4		
Citizen of Another	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5		
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6		

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault Libel And Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce/ICC	
<input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 875 Customer Challenge 12 LISC 3410	
<input type="checkbox"/> 180 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> LABOR	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 185 Contract Product Liability		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 950 Constitutionality of State Statutes	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609		

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 (specify) Transferred from another district  6 Multi-district Litigation  7 Judge from Magistrate

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. 1114, 1125. Defendants are infringing Plaintiff's GlassMaster(R) trademark, and the trade dress of Plaintiff's cleaning wand.

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	S DEMAND	<input type="checkbox"/> CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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**VIII. RELATED CASE(S) instructions:**  
IF ANY

JUDGE N/A

DOCKET NUMBER

DATE

6/21/2004

SIGNATURE OF ATTORNEY OF RECORD

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Yes  
 No

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

\_\_\_\_\_

\_\_\_\_\_